

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

I.S. #1 and I.S. #2, minors, by their
Mother and next friend, MIKETRA LARRY
and

B.M. #1, B.M. #2, and B.M. #3, minors, by their
Mother and next friend, BRITTANY MCKENNEY,

Civil Action Number: _____

Plaintiffs,

v.

RACINE UNIFIED SCHOOL DISTRICT,

Defendant.

COMPLAINT

Plaintiffs, by their attorney Anne T. Sulton, bring this action against Defendant, seeking relief for unlawful discrimination based on race in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), and is authorized to order declaratory relief under 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper in the Eastern District of Wisconsin under 28 U.S.C. § 1391(b) because the claims arise in Racine, Wisconsin, which is within this Court's geographical boundaries, the parties reside in the District, and all events giving rise to this action occurred in the District.

PARTIES

3. Plaintiff I.S. #1 is six years old and in kindergarten. He is African American. He attends Julian Thomas school during the regular school year. This is a public school operated by Defendant.

4. Plaintiff I.S. #2 is seven years old and in the second grade. He is African American. He attends Wadewitz school during the regular school year. This is a public school operated by Defendant.

5. Plaintiff Miketra Larry is an adult African American female, mother of Plaintiffs I.S. #1 and I.S. #2, and relies on Defendant to provide education for her sons.

6. Plaintiff B.M. #1 is eleven years old and in the fifth grade. He is African American. He attends Knapp school during the regular school year. This is a public school operated by Defendant.

7. Plaintiff B.M. #2 is eight years old and in the third grade. She is African American. She attends Knapp school during the regular school year. This is a public school operated by Defendant.

8. Plaintiff B.M. #3 is seven years old and in the second grade. She is African American. She attends Knapp school during the regular school year. This is a public school operated by Defendant.

9. Plaintiff Brittany Mckenney is an adult African American female, mother of Plaintiffs B.M. #1, B.M. #2, and B.M. #3, and relies on Defendant to provide education for her son and daughters.

10. Defendant Racine Unified School District is a nine-member elected body responsible for governing the Racine Unified School District (RUSD), a public school district

serving more than 17,000 students in kindergarten through 12th grade residing in the City of Racine and several smaller adjacent communities. The Board derives its authority to govern RUSD from the Wisconsin Constitution and State statutes. The school district is a recipient of Federal funds, including but not limited to what are known as Elementary and Secondary School Emergency Relief Fund (ESSER Fund). The Board is liable for the acts or omissions of its employees, agents, and representatives.

ALLEGATIONS OF FACT FOR ALL CAUSES OF ACTION

11. According to RUSD, RUSD received money from the Federal government via the State government to operate its schools during the summer of 2021. Some of the Federal dollars come from the ESSER Fund. Some of the dollars come from the Governor's Emergency Education Relief Grant Program (GEER Funds).

12. According to the RUSD's written response to inquiries recently made by the Racine Branch of the National Association for the Advancement of Colored People, RUSD received the following funds:

“a. ESSER Fund (CARES Act)

i. ESSER I

1. Total Dollars: \$5,883,184

a. District Allocation: \$4,899,109

b. Private Schools: \$984,075

ii. GEER Funds

1. Total Dollars: \$2,540,433

a. District Allocation: \$2,115,496

b. Private Schools: \$424,936

b. ESSER II Fund (CRRSA Act)

i. \$23,636,060

c. ARP ESSER (ARP Act)

i. (Initial Projection): \$53,080,097".

13. According to the United States Department of Education, "Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the Department awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID-19) has had, and continues to have, on elementary and secondary schools across the nation."

14. According to the Wisconsin Department of Public Instruction (DPI), "The GEER Grant Program, part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, provides funds to help local education agencies (LEAs) respond to changes in student needs due to COVID-19 (CARES Act, Section 18002)." DPI also states: "Guiding questions for LEAs to consider: What barriers exist in your community that may prevent students, teachers, and other

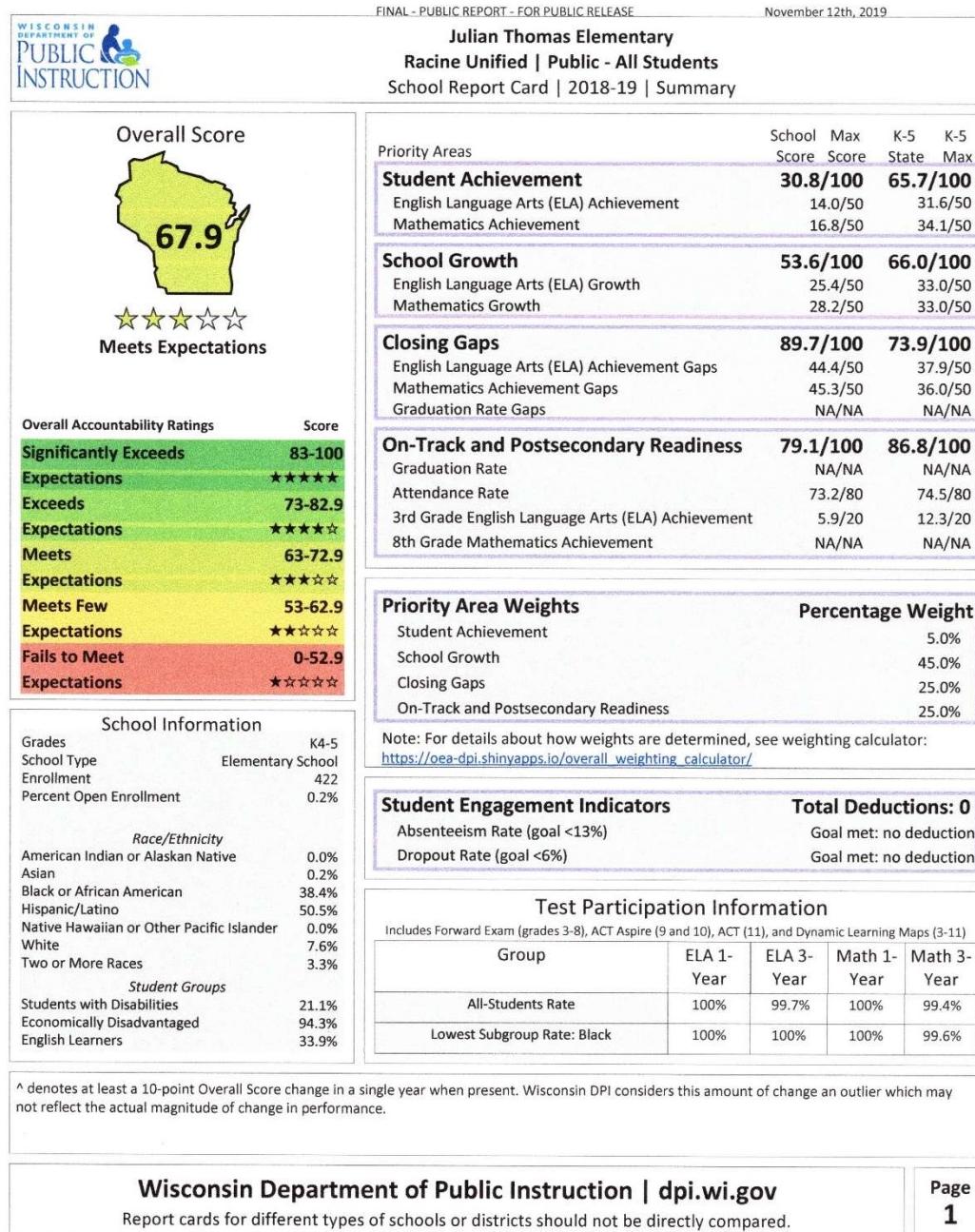
program beneficiaries from access or participation in the CARES-funded projects or activities listed in the application? What steps are being taken to address or overcome these barriers?"

15. RUSD decided to open only three K-8 grade schools for summer school, including Gifford, but not Julian Thomas or Knapp.

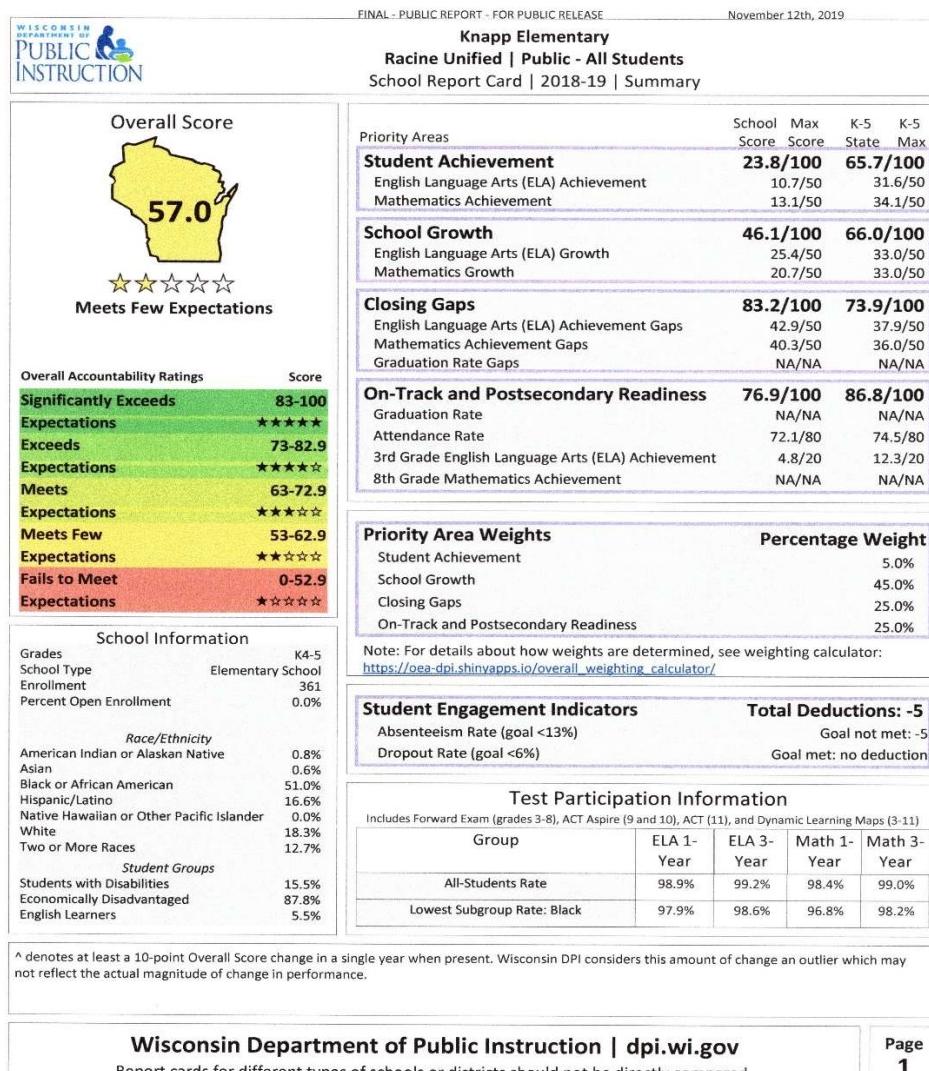
16. Gifford's student enrollment is 72.9% white and 28.9% economically disadvantaged.

Wisconsin Department of PUBLIC INSTRUCTION		FINAL - PUBLIC REPORT - FOR PUBLIC RELEASE		November 12th, 2019																																																																																																	
Gifford Elementary Racine Unified Public - All Students School Report Card 2018-19 Summary																																																																																																					
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17. Julian Thomas' student enrollment is 88.9% African American or Hispanic and 94.3% economically disadvantaged.



18. Knapp's student enrollment is 67.6% African American or Hispanic and 87.8% economically disadvantaged.



19. RUSD also decided to not provide bus service for the majority of students wanting to attend the three K-8 schools slated to be opened summer school 2021.

20. RUSD also has decided to not offer enough after school academic enrichment programs – these programs reportedly already have waiting lists.

21. According to Pamela Harris, a recently retired RUSD teacher who taught at Julian Thomas during several previous summers, “RUSD is closing schools that historically are open every summer. Julian Thomas and Knapp need to be open this summer to close the learning loss gap that occurred during this past year.”

22. According to the Racine Interfaith Coalition, RUSD should open Julian Thomas and Knapp for summer school 2021.



May 21, 2021

Racine Unified School District
3109 Mt. Pleasant Street
Racine, WI 53402

Re: Expansion of RUSD Summer School Program to support low income and minority students

Dear Dr. Gallien and RUSD Board Members:

We are writing today to express our strong support for the efforts of The Racine Branch of the National Association for the Advancement of Colored People (Racine NAACP Branch), the South Gate Lodge #6 of Racine, the African American Roundtable, and black faith-based organizations in their request that the District make a significant extra effort to ensure that as many black and brown children as possible attend RUSD classes this summer.

This is critically important because we believe that issues related to the extended period of remote learning in 2020 and 2021 -- particularly the lack of parental supervision and reliable access to technology -- have likely widened the already significant learning gap between these children and their higher-income and non-minority peers.

Specifically, we strongly support the following requests that were outlined by the NAACP in their letter of April 26, 2021 and their press conference of May 12, 2021:

- open and staff two additional inner-city schools -- Julian Thomas and Knapp -- for summer school,
- expand current summer school curriculum to address learning gaps and expand eligibility for after-school activities,
- provide school bus service or free public bus passes for all children who are not within walking distance of an open school,
- provide information and education programs at each school to support parents' efforts to help their children make up learning that was lost because of the pandemic,
- extensively market the 2021 summer school program, including providing alternatives to online enrollment for parents who do not have access to the Internet.

We also respectfully request that the District continue to provide meal service to as many community children as possible, as you did so successfully throughout the pandemic.

We appreciate that there may be challenges related to staffing and the maintenance and operation of additional facilities during the summer session, but we hope that the District will work especially hard to find creative and meaningful ways to ensure that minority and low income students and their parents are accommodated during these extraordinary times.

Racine Interfaith Coalition, 2302A DeKoven Avenue, Racine, WI 53403 Ricracine1993@gmail.com

Funding these extra efforts should not be an issue since, as the NAACP has pointed out, the District has received nearly \$5M in federal Elementary and Secondary School Emergency Relief (ESSER) funds, the stated purpose of which is to "remove barriers, address learning lost due to the global pandemic and meet the unique needs of low income and black and brown children."

We understand that you are meeting again with the NAACP and others on May 25 and we hope to hear, after that meeting, that you have given these requests strong consideration and are making every effort to meet the needs of your most disadvantaged students.

Sincerely,

Janeen Hayward
Co-President
Racine Interfaith Coalition

Cc:

Dwight Mosby, Sr., President, Racine Branch NAACP
Lawrence Terry, Sr., Education Committee, South Gate Lodge #6 of Racine
Pastor Ernest Ni'A, Wayman AME Church and African American Roundtable

Racine Interfaith Coalition, 2302A DeKoven Avenue, Racine, WI 53403

23. According to Plaintiff Larry, "If Julian Thomas school is open this summer, I will send both of my children there. We live within a 5-minute walk of this school. I have enrolled my sons in one of the three schools open this summer (Mitchell) but it is very far from our home and RUSD has not offered me bus service for one of my sons, making it difficult for the entire family, in part, because I have to work. My children need to attend summer school because during the past year they only were in school about three months. They have lost learning. I am worried about their education. RUSD should open Julian Thomas school this summer."

24. According to Plaintiff Mckenney, “I live about a 3-5 minute walk from Knapp. Three of my children attend this school during the school year. They only spent a few months in school during the past year and need to be in summer school. Because Knapp currently is closed for the summer, and there is no bus service being provided by RUSD for my three small children, and I do not have a car, I and my three small children will have to walk 45 minutes to one hour to get to one of the three schools RUSD said it will open this summer. This creates an incredible hardship for my entire family. If Knapp is open this summer, I will send my three small children there for summer school.”

CAUSES OF ACTION

25. All previous paragraphs are incorporated here by reference.
26. This complaint is brought pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964. These laws prohibit discrimination on the basis of race, and require that educational programs and services must be operated and provided in a non-discriminatory manner, including but not limited to admissions, recruitment, academic programs, student treatment and services, counseling and guidance, classroom assignment, and recreation.
27. All of the Plaintiffs are African American. They are members of a protected group.
28. RUSD’s decisions to close two schools serving the largest percentages of economically disadvantaged students of color, and not providing bus service for these students to attend the three schools serving larger percentages of white and affluent students, are inconsistent with the letter and spirit of the ESSER Fund and GEER Fund.

29. These RUSD decisions also violate constitutional and statutory guarantees of equal educational opportunities.

30. Despite civic organizations' repeated oral and written requests during the past several weeks asking RUSD to modify its summer school programming to ensure inclusion of poor students of color as noted herein at paragraph 22, at this time RUSD has not modified its summer school programming and currently is refusing to open Julian Thomas and Knapp elementary schools.

31. RUSD's summer school programming decisions are having an adverse impact on hundreds of students in the City of Racine, in general, and Plaintiffs, in particular, because these decisions are denying poor students of color equal educational opportunities – their schools are closed, there is no bus service for them to get to the schools that are slated to be open, and if they can get there they must leave right after classes because there are no seats currently remaining for the too few after school academic enrichment activities.

32. RUSD is intentionally denying Plaintiffs equal educational opportunities to economically disadvantaged students of color by closing their schools during the summer 2021, refusing to provide bus services most need to get to the three K-8 grade schools that are open during the summer 2021, and failing to offer a sufficient number of seats in after school academic enrichment activities.

33. As a result of Defendant's unlawful actions, Plaintiffs will suffer additional lost learning and are suffering emotional distress.

34. Plaintiffs seek the relief noted below in the Relief Requested section.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this honorable Court enter judgment in their favor and against Defendant, and accord them the following relief:

- A. Enter a declaratory judgment that the actions of Defendant complained of herein are in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964;
- B. Issue preliminary and permanent injunctions restraining Defendant, their agents, employees, representatives, and successors, and any other person acting directly or indirectly with them, from adopting, implementing, or enforcing any policy or practice that treats economically disadvantaged students of color differently from and less favorably than their similarly situated peers;
- C. An order directing Defendant to open for summer school classes and after school academic enrichment activities the Julian Thomas and Knapp elementary schools during the summer 2021;
- D. Order all compensatory relief necessary to cure the adverse educational effects of Defendant's discriminatory actions on Plaintiffs' education;
- E. Award compensatory damages in an amount that will fully compensate Plaintiffs for the emotional distress and other damages that have been caused by Defendant's conduct alleged herein;
- F. Award Plaintiffs their reasonable attorneys' fees and costs; and
- G. Order such other relief as this Court deems just and equitable.

JURY DEMAND

Plaintiffs hereby respectfully request a trial by jury on all the issues in this action that are triable to a jury.

Respectfully submitted this 24th day of May, 2021.

s/ Anne T. Sulton

Anne T. Sulton, Ph.D., J.D.
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Post Office Box 371335
Milwaukee, WI 53237
Phone: 360.870.6000
Email: annesulton@gmail.com

Attorney for Plaintiffs